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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
8 **OF THE STATE OF CALIFORNIA**  
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10 In the Matter of the Application of:

11 **H.S., filed by**

12 **K.M.**

13 Application No: 679418  
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**Precedent Decision No. 03-03**

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16 A telephone hearing on this application was held on June 10, 2003, in Sacramento, California, by  
17 Richard P. Fisher, Hearing Officer, California Victim Compensation and Government Claims Board  
18 (Board). Applicant K.M., mother of victim H.S. (DOB 6-10-89), took part in the hearing via telephone  
19 from New York and testified under oath. K.M.'s attorney, Stephanie Golden, also took part in the  
20 hearing via telephone from New York. The hearing was closed to the public pursuant to Government  
21 Code section 13963.1.

22 **Claim History**

23 The application was received on November 6, 2001, and is based on allegations of child abuse  
24 and endangerment made by H.S. against her father, T.S. H.S. was previously determined to be eligible  
25 for compensation under the Victim Compensation Program (program).<sup>1</sup> The allegations of abuse and  
26 endangerment made by H.S. were denied by T.S. The allegations arose during marital dissolution  
27 proceedings involving K.M. and T. S. Contested issues surrounding H.S.'s custody and visitation  
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29 <sup>1</sup> Because the application was filed before the effective date of the current statute, Statutes 2002, chapter 1141 (Senate Bill 1423, Chesbro), all references are to the Government Code sections in effect on or before December 31, 2002.

1 periods arose and the Family Law Court in New York ordered a psychological evaluation of the  
2 family. Marion Gindes, Ph.D., conducted the evaluation.

3 The current appeal concerns a request by K.M. for reimbursement from the program for some  
4 of the costs incurred as a result of Dr. Gindes's psychological evaluation of the family. K.M.'s request  
5 was recommended for denial and she timely appealed that recommendation on H.S.'s behalf.

### 6 **Summary of Issues**

7 Staff recommended that the application be denied because the psychological services performed  
8 by Dr. Gindes did not appear to be pecuniary losses that arose as a direct result of the qualifying crime.

### 9 **Findings of Fact**

10 K.M. and T.S. were married in 1988 and had their daughter, H.S., on June 10, 1989. Beginning  
11 in 1997, the couple began seeing less and less of each other because T.S.'s career opportunities took him  
12 away from the family's home in New York to Los Angeles. K.M. and H.S. eventually moved to Los  
13 Angeles and joined their father. But K.M. continued to shuttle back and forth between Los Angeles and  
14 New York and never appeared to fully settle down in the Los Angeles area. The marriage between K.M.  
15 and T.S. deteriorated between 1997 and 2000 and T.S. filed for divorce in the summer of 2000. He and  
16 K.M. stopped living together at that time. H.S. divided her time between her parents during the period  
17 of their physical separation. Eventually, K.M. moved back to New York in October 2001. That move  
18 focused K.M. and T.S. on the custody and living arrangements of H.S., as did the allegations made by  
19 H.S. regarding inappropriate behavior by T.S. toward her.

20 During the divorce proceedings, H.S. told K.M. and others that when she had lived alone with  
21 her father in Los Angeles he had occasionally walked around the house naked. H.S. also reported that  
22 T.S. had masturbated<sup>2</sup> in her presence. The allegations were investigated by both California and New  
23 York child protective agencies. At least one instance of child abuse was substantiated, but others were  
24 not. No criminal charges were ever brought against T.S. in California or New York based on the  
25 allegations made by H.S. In the end, the Superior Court of California awarded joint legal custody of  
26 H.S. to both of her parents and K.M. was awarded primary physical custody. K.M. was also given  
27 permission to move to New York with H.S. and T.S. was allowed supervised visits with H.S.

28 The New York Family Law Judge assigned to the case sought an opinion from Dr. Gindes  
29 regarding visitation and therapeutic services that would be helpful for H.S. and her parents. Pursuant to

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<sup>2</sup> When questioned about this serious allegation, H.S. explained that T.S. would "scratch himself" in her presence.

1 court order, Dr. Gindes met with K.M. and H.S., and spoke with T.S. over the phone. Dr. Gindes spent  
2 a total of 15.55 hours consulting with the family members. With respect to her psychological  
3 evaluation, Dr. Gindes wrote that her report was being submitted in compliance with the Order issued by  
4 Judge Susan K. Knipps of the Family Court of the State of New York. The court order required Dr.  
5 Gindes to “interview the parents, child and any other collateral sources” that Dr. Gindes deemed  
6 appropriate and to “render an opinion regarding visitation and/or therapeutic services” that may be  
7 helpful to the family.

8 After receiving K.M.’s request for compensation for a \$500.00 portion of Dr. Gindes’s \$3,000.00  
9 evaluation fee, Board staff wrote to Dr. Gindes and asked her to fill out and return an Initial Treatment  
10 Plan regarding her treatment of H.S. On May 15, 2003, Dr. Gindes wrote to the Board and explained  
11 the nature of her professional relationship with H.S. She states that, “I received a request to complete a  
12 Treatment Plan for [H.S.]. I have never served as [H.S.]’ therapist. I was appointed by the Court to  
13 conduct an evaluation with respect to a visitation dispute. I am returning the form, without completing  
14 it.” Dr. Gindes makes it clear that in her professional opinion, her evaluation of the family was not  
15 therapeutic and was not ordered to ameliorate the effects of alleged criminal wrongdoing taking place  
16 within the family. Her interviews and discussions with the family were *evaluative* not *therapeutic*, and  
17 they were not necessary as a direct result of the qualifying crime.

18 During the hearing, K.M. and her attorney Ms. Golden argued that Dr. Gindes provided mental  
19 health counseling that is compensable under the program because, notwithstanding Dr. Gindes’s written  
20 comments, her evaluation was more in the nature of therapy and less in the nature of an evaluation. In  
21 particular, Ms. Golden argued that the evaluation undertaken by Dr. Gindes was a “forensic evaluation”  
22 to determine whether T.S. would be allowed to have visitation rights with H.S. She argued that the  
23 evaluation should not be seen as a mere visitation or child-custody evaluation because the issue before  
24 the Family Court was whether T.S. presented a threat to H.S. such that a protective order should issue.  
25 In other words, Ms. Golden argued that Dr. Gindes undertook a *therapeutic evaluation* that was  
26 designed to protect H.S. and provide the framework for her mental health healing over time. It was not  
27 an evaluation that was designed to establish the mere mechanics of T.S.’s visitation rights.

28 Based on the information provided by K.M. and Ms. Golden during the hearing and on the  
29 documentary evidence contained in the Board’s files, substantial evidence supports each of the  
30 following findings of fact:

1. Marion Gindes, Ph.D., conducted a court-ordered psychological evaluation of K.M., T.S. and H.S. between October 17, 2002, and March 3, 2003. The purpose of her evaluation of the family was to render an opinion regarding future visitations between H.S. and T.S. and to identify therapeutic services that might be useful to the family in the future.
2. Dr. Gindes at no time served as the therapist for K.M., T.S. or H.S.
3. Dr. Gindes's psychological evaluation of the family did not address the mental health needs of either K.M. or H.S. that arose because of the inappropriate behavior of T.S.
4. In her report, Dr. Gindes neither refers to a "crime" nor leaves the impression that any criminal behavior or allegations of criminal behavior played any part in her evaluation of K.M., T.S. and H.S.

### **Determination of Issues**

The Board shall approve an application for assistance if a preponderance of the evidence shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.

(Gov. Code, § 13964(a).) Applicants have the burden of proof on all issues necessary to establish their eligibility for program compensation. (Gov. Code, § 13964(a); Cal. Code of Regs., tit. 2, § 647.32<sup>3</sup>.)

Based on Findings of Fact Nos. 1 through 4, it is determined that K.M., on behalf of H.S., has clearly failed to meet her burden of establishing that the expenses she incurred as a result of Dr. Gindes's psychological evaluation are compensable under the program. (Gov. Code, § 13964(a); Reg., § 647.32.) Dr. Gindes spent nearly five hours in discussion with H.S. and yet wrote to the Board that she had "never served" as H.S.'s therapist. The explanation for this apparent incongruity is that Dr. Gindes was not providing mental health counseling to K.M. or H.S. for issues that arose as a direct result of a qualifying crime. Rather, Dr. Gindes was performing an evaluation of H.S. and her parents so that a court could better determine a *future course* the family should take as regards T.S.'s visitation rights and the overall mental health needs of the family.

Contrary to the impression left by K.M.'s testimony and Ms. Golden's arguments, Dr. Gindes did not perform therapeutic counseling. Still less can it be said that Dr. Gindes provided mental health counseling for K.M. or H.S. in order to ameliorate the effects of a qualifying crime. It is therefore determined that K.M., on behalf of H.S., has failed to meet her burden of proving by a preponderance of

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<sup>3</sup> All regulation citations are to California Code of Regulations, title 2.

1 the evidence that she is entitled to compensation for Dr. Gindes's court-ordered services. (Gov. Code, §  
2 13965(a)(1)(A); Reg., § 647.32.)

3 **Order**

4 The request for compensation for Dr. Gindes's court-ordered psychological evaluation is denied.  
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12 Application No: 679418

**Notice of Decision**

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14 On October 24, 2003, the California Victim Compensation and Government Claims Board  
15 adopted the attached Decision as Precedent Decision Number 03-03.  
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17 Date: October 28, 2003

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19 JUDITH A. KOPEC  
20 Supervising Staff Counsel  
21 California Victim Compensation and  
22 Government Claims Board  
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